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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/820,076	04/07/2004	Nicolas Garcia	52375/G470	7226
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WELLS ST. JOHN P.S.				
601 W. FIRST AVENUE, SUITE 1300				
SPOKANE, WA 99201				
EXAMINER				
CASTELLANO, STEPHEN J				
ART UNIT		PAPER NUMBER		
3781				
MAIL DATE		DELIVERY MODE		
11/17/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/820,076

**Applicant(s)**

GARCIA, NICOLAS

**Examiner**

/Stephen J. Castellano/

**Art Unit**

3781

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 26 August 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-3 and 7-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 7-10 is/are rejected.
- 7) ☒ Claim(s) 8 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

Claims 4-6 have been canceled. Claims 1-3 and 7-10 are pending.

Claim 8 is objected to because of the following informalities: The word "compliments" is either inappropriate or misspelled. Appropriate correction is required.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 10 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 10 recites the limitations "the lift tab" in line 2 and "any two adjacent lift tabs" in line 3. There is insufficient antecedent basis for these limitations in the claim.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3 and 7-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Malvasio (6138963) in view of Essen (4655373).

Malvasio discloses a container for painting, the container comprises a main body and a handle, the main body has two cavities, the handle has a shaft that extends parallel to the cavities. Malvasio discloses the handle except for the handle being tubular as stated in claims 1 and 7 and for the upper lip of the handle being continuous with the upper lip of the main body as stated in claim 7. Essen teaches a tubular handle with an upper lip which is continuous with the upper lip

of the main body. It would have been obvious to modify the handle to be tubular to provide a more comfortable grip which allows comfort from any angle at which the handle is gripped. It would have been obvious to modify the upper lip of the handle to be continuous with the upper lip of the main body to provide strength at the connection of the upper lips so that the handle's upper lip will strengthen the upper lip of the main body to make the main body and handle structure stronger and prevent deflection, tearing or breakage of the upper lip region of the main body.

Re claim 3, the shaft of the handle is spaced from the main body. This allows the shaft of the handle to fit between the rungs of a ladder wherein the space between the rungs represents an opening in a ladder.

Re claim 7, the main body has an upper lip. The handle has an upper lip. The upper lips are contoured to define a first shape adapted to cover a separate paint container. The upper nested container in Fig. 6 covers the lower paint container as an example of this capability.

Re claim 8, at least one shape defined by the upper lips is a circle that matches the upper profile of the main body and complements the opening of a cylindrical paint container.

Claims 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Malvasio in view of Essen as applied to claim 8 above, and further in view of Von Holdt (4735337).

The Malvasio-Essen combination discloses the invention except for the lift tabs of claim 9 and the two distinctly differently shaped sealing flanges of claim 10.

Re claim 9, Von Holdt teaches a closure with equally spaced lift tabs (sections 40) in the embodiment of Fig. 5-7. Once each section 42 is broken away, the sections 40 may be released

by lifting upwardly without tools and reattach by snapping back into position by pushing downwardly without tools so that the closure is removed without the use of tools.

Re claim 10, Von Holdt teaches, in the embodiment of Fig. 5-7, two different series of distinctly shaped sealing flanges. As shown in Fig. 5, the closure seals through the action of sections 40 (each being approximately 60 degrees in arc length and spaced equally) of gripping flange 18a and portions 48 (each can be up to approximately 60 degrees in arc length and spaced equally) of gripping flange 18a. Sections 40 represent a first type of sealing flange and portions 48 represent a second type. A first difference in the shape of the sealing flanges is that the first type (section 40) has a folding weakness 46 while the second type (portions 48) do not have the folding weakness. Line 49 represents a cut line wherein each portion 48 can be cut and one part of the split portion may be removed. When modified in this fashion, the remaining part of portion 48 provides a second difference in the shape of the sealing flanges because the remaining part is less than 60 degrees and approximately 45 degrees in arc length while the section 40 is approximately 60 degrees.

It would have been obvious to modify the closure (main body and handle) of Davis to have the lift tab and sealing flange arrangement of Von Holdt to provide a closure which is easy to removed and reattach in a tightly secured manner and which can be modified by (1) not using the portions 48 at all, least retention force, easiest to remove, (2) using portions 48 and cutting the portions 48 to provide an increase in closing strength over (1), greater retention force, less easily removed, and (3) using the full arc length of portions 48 to provide a maximum closing strength and an increase over (2), greatest retention force, most difficult to remove. See col. 4, lines 13-48.

Applicant's arguments with respect to claims 1-3 and 7-10 have been considered but are moot in view of the new ground(s) of rejection.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to /Stephen J. Castellano/ whose telephone number is 571-272-4535. The examiner can normally be reached on increased flexibility plan (IFP).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony D. Stashick can be reached on 571-272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Stephen J. Castellano/  
Primary Examiner  
Art Unit 3781

sjc